

Mark McLean Saunders III

Fax 744 73 227

NUNC PRO TUNC

FILED

Centinela State Prison

MAY 12 2008

PO Box 931 IMPERIAL, CA 92251

2008 MAY 14 AM 11:20

In Pro Se

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
RHM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Mark McLean Saunders III

CASE NO. 08CV0757 L(AJB)

Petitioner

v.

V.M. ALMACER

Warden

Respondent

and

The Attended General  
of The State of California  
Additional Respondent

PETITIONER REQUESTS  
for the Court to Stay  
PROCEEDINGS IN PETITIONER'S  
28 USC § 2254 CASE AND  
HOLD CASE IN ABEYANCE  
UNTIL PETITIONER'S CURRENTLY  
PENDING STATE HABEAS  
CORPUS PETITION IS DECIDED  
BY THE CALIFORNIA STATE COURTS

PETITIONER MARK MCLEAN SAUNDERS III HEREBY  
REQUESTS THE COURT TO STAY PROCEEDINGS  
IN PETITIONER'S 28 USC § 2254 CASE. CASE  
No. \_\_\_\_\_ BECAUSE Petitioner is  
UNDERGOING a "Exhaustional Round" of  
STATE HABEAS CORPUS PROCEEDINGS IN ORDER  
TO LITIGATE CLAIMS OF VIOLATIONS OF PETITIONER'S  
CONSTITUTIONAL RIGHTS ( SEE ATTACHED  
DECLARATION OF PETITIONER, STATING GOOD  
CAUSE FOR ISSUANCE OF THE INSTANT REQUEST  
STAY / ABEYANCE MOTION ) PETITIONER HEREBY  
CITES THE LEGAL AUTHORITY CITED BY THE  
9TH CIRCUIT COURT IN FORD V HUBBARD

330 F 3D 1086: KELLY V. SMALL 315 F3D 1063 AND PETIT AND THE US. SUPREME COURT CASE OF RILHES V. WEBER 544 US 269 (2005) TO SUPPORT THIS MOTION. PETITIONER ARGUES THAT HE HAS MET THE 2 CRITERIA FOR OBTAINING THE REQUESTED STAY IN RILHES V. WEBER:

1) ARGUE MERIT & CLAIMS: CLAIMS OF CONSTITUTIONAL VIOLATIONS NOT ADDRESSED BY COUNSEL ON DIRECT APPEAL. PETITIONER'S CASE INVOLVES A 50 YEARS TO LIFE SENTENCE FOR VC 23152(A) NORMAL SENTENCE RANGE 16, 2, 3 AND HS 11530 (A) WITH A NORMAL SENTENCE RANGE 00 DAYS TO A YEAR. PETITIONER CLAIMS THAT THE ISSUES RAISED IN THE PETITION OF HABEAS CORPUS NOT BEEN HEARD IN THE STATE COURT ARE VALID AND REASONABLE AND VIOLATE THE RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION (SPECIFICALLY THE 5<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup>, AND, 14<sup>TH</sup> AMENDMENTS) APPELLATE COUNSEL FAILED TO RAISE THESE ISSUES ON DIRECT APPEAL, THEREFORE HE HAS NOT ADDRESSED THE FOLLOWING ISSUES ON A PETITION OF HABEAS CORPUS WHICH PETITIONER ASKS THAT THE COURT HEAR IN THE FURTHERANCE OF JUSTICE, ON THE FOLLOWING GROUNDS.

Ground #1 "INEFFECTIVE ASSISTANCE OF COUNSEL"

PETITIONER'S TRIAL COUNSEL WAS GROSSLY INEFFECTIVE AT EVERY ASPECT OF THE DEFENSE. THE FAILURE TO DEFEND WAS WANTON AND SO A QUIT PLEA BY THE PETITIONER THIS VIOLATING THE RIGHTS GUARANTEED BY THE 5<sup>TH</sup> AND 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS (SEE STRICKLAND V. WASHINGTON 466 U.S. 668 AND ALSO U.S. V. CLEALIC 466 U.S. 648)

Ground #2 "INAPPROPRIATE APPLICATION OF THE 3 STRIKES LAW"

PETITIONER'S 3 STRIKES AROSE FROM A "SINGLE" UNINTENTIONAL ACT WHICH HAPPENED 20 YEARS AGO (THIS RESULTED IN A SENTENCE THAT IS UNCONSTITUTIONALLY EXCESSIVE BECAUSE IT EXCEEDS THE MAXIMUM SENTENCE INTENDED THEREBY IN VIOLATION OF THE 5<sup>TH</sup> AND 8<sup>TH</sup> AMENDMENTS OF THE UNITED STATES CONSTITUTION (SEE RUTLEDGE V. U.S. 517 U.S. 292 (1996))

Ground #3 "DOUBLE JEOPARDY VIOLATION"

PETITIONER WAS SUBJECT TO MULTIPLE JEOPARDY BY VIRTUE OF THE ASSESSMENT OF THE 3 STRIKES LAW FOR THE COMMISSION OF ONE OFFENSE, AND THE SUBSEQUENT APPLICATION OF ALL THREE STRIKES TO

Enhance the sentence on the  
current offense in violation  
of the Double Jeopardy Protection  
in the Fifth Amendment of the  
United States Constitution (See  
Benzal v. Ohio 432 US 161 (1977))

Ground # 4 "INEFFECTIVE ASSISTANCE  
OF APPELATE COUNSEL"

PETITIONER'S APPELATE COUNSEL WAS  
INEFFECTIVE FOR FAILING TO RAISE THE  
SUBSTANTIAL CLAIMS RAISED IN THIS  
PETITION. THIS RESULTED IN A VIOLATION  
OF THE RIGHT TO COUNSEL GUARANTEED  
BY THE SIXTH AMENDMENT OF THE  
UNITED STATES CONSTITUTION. SPECIFICALLY  
APPELATE COUNSEL FAILED TO RAISE THE  
ISSUES OF INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL, IMPROPER APPLICATION OF  
THE 3 STRIKES LAW, AND THE DOUBLE  
JEOPARDY VIOLATION (SEE SMITH V  
ROBBINS, 528 US. 259 (2000))

2) PETITIONER WAS UNABLE to file  
THIS MOTION TO BE FILED DUE  
TO THE PETITIONER'S FEDERAL APPEAL  
FILED LAST WEEK. AND ASKS THAT  
THE COURT RECOGNIZE THAT I HAVE  
DONE MY BEST TO FILE "ALL DOCUMENTS"  
IN MY APPEAL in A "TIMELY MANNER."

I BEGAN MY RESEARCH VIA US  
MAIL, BECAUSE I WAS UNABLE to  
Go To THE LAW LIBRARY AT CALIPATRIA  
BECAUSE OF CONTINUOUS Lockdowns.

I Then Was Transferred To CENTINELA  
and HELD in RECEPTION WITH NO  
Law LIBRARY ACCESS. PETITIONER STILL  
MAINTAINS THAT THE Writ of HABEAS  
CORPUS Now Being Heard in STATE  
Court Was FILED in A TIMELY MANNER  
and was MAILED out on FEB. 29 2008  
PETITIONER ALSO MADE THE COURT  
AWARE OF THIS Writ of HABEAS CORPUS  
in DIRECT APPEAL MAILED out on  
APRIL 21<sup>ST</sup> 2008 PETITIONER HAS NOT  
ONLY FILED ALL DOCUMENTATION in A  
TIMELY MANNER, BUT ALSO ASKS THAT  
THE COURT CONSIDER THE FACT THAT  
THE CASE IN APPEAL INVOLVES

A 50 Years to Life Sentence and  
Petitioner contends that all Petition  
was FILED within the 1 Year Deadline  
from Petitioner's Denial of DIRECT  
APPEAL at the STATE LEVEL.

MARK McLean SAUNDERS III  
RESPECTFULLY REQUEST THE REGISTERED  
STAY TO BE GRANTED. in Pet Se  
RESPECTFULLY SUBMITTED

Mark McLean

Mark McLean SAUNDERS III  
Petitioner

in Pet Se

DECLARATION OF PETITIONER

I MARK McLEAN SAUNDERS HEREBY DECLARE:

I AM THE PETITIONER IN WRITING  
CASE. MY ADDRESS IS:

MARK McLEAN SAUNDERS  
FO2744 D3-227  
CENTINELA STATE PRISON  
PO BOX 931 IMPERIAL, CA  
92251

I HAVE MADE THIS DECLARATION IN  
SUPPORT OF THE WRITING MOTION FOR  
STAY / ABSTINCE. & DEMONSTRATE MY  
SITuations (SEE RHINES V. WEBER 544 US  
269 (2005)) TO SUPPORT THIS MOTION:

1) THE GROUNDS IN MY STATE HABEAS  
CORPUS ARE CONSTITUTIONALLY VALID  
BUT AS MUCH AS CLAIMS MADE VIOLATE  
FIFTH, SIXTH, EIGHTH, AND FOURTEENTH  
AMENDMENTS OF THE UNITED STATES  
CONSTITUTION.

GROUNDS 1 "INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL"

GROUNDS 2 "INAPPROPRIATE APPLICATION OF  
THREE STRIKES LAW

Ground 3 "DOUBLE JEOPARDY VIOLATION"

Ground 4 "INFFECTIVE ASSISTANCE OF APPELLATE COUNSEL"

GILLESSE ISSUES WERE NOT RAISED ON MY DIRECT APPEAL BY APPELLATE COUNSEL (GROUNDS 1, 2, AND 3) PETITIONER IS SERVING A 25 TO LIFE SENTENCE FOR VC 23152 (A) NORMAL SENTENCE RANGE 16, 2, 3 AND A SECOND 25 TO LIFE SENTENCE FOR HS 11550 (A) NORMAL SENTENCE RANGE 90 DAYS TO A YEAR FOR A TOTAL SENTENCE OF 50 YEARS TO LIFE. PETITIONER CONTENTS THAT THIS SENTENCE IS UNJUST. PETITIONER ALSO CONTENTS THAT GILLE INTENT OF THE THREE STRIKES WAS NOT TO CULL THREE STRIKES FROM A "SINGLE" NON-INTENTIONAL ACT AND THEREFORE AN ERROR.

APPELLATE COUNSEL FAILED TO RAISE THIS ISSUE, AS WELL AS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ON DIRECT APPEAL.

2) PETITIONER HAS DONE EVERYTHING  
POSSIBLE TO TRY TO MEET ALL  
DEADLINES WHILE AT THE SAME  
TIME OVERCOME MANY OBSTACLES  
IN ATTEMPTING TO DO SO.

- 1) PETITIONER WAS UNAWARE THAT THIS  
DOCUMENT SHOULD HAVE BEEN FILED  
TOGETHER WITH PETITIONER'S FEDERAL  
APPEAL.
- 2) PETITIONER DID TRY TO MAKE THE  
COURT AWARE OF COLLATERAL ATTACK  
NOW PENDING IN THE STATE COURT  
BY ATTACHING EXTRA PAGES IN THE  
GROUNDS SECTION OF THE FEDERAL  
PETITION AND LABELING THEM AS  
CURRENTLY BEING EVALUATED AT THE  
STATE LEVEL.
- 3) PETITIONER HAS LIMITED LAW  
LIBRARY ACCESS. PETITIONER  
WAS FIRST INCARCERATED AT  
CALIPATRIA WHICH ALLOWED NO  
MATERIAL AND NO LAW LIBRARY  
ACCESS TO ANY INMATES, EXCEPT

FOR DEADLINERS. PETITIONER THEN BEGAN LEGAL RESEARCH VIA U.S. MAIL. PETITIONER WAS ABLE TO ACCESS THE LAW LIBRARY THE LAST PART OF 2007. PETITIONER WAS TRANSFERRED TO CENTINELA PERSON WHICH FURTHER SLOWED LEGAL RESEARCH AND LIBRARY ACCESS. PETITIONER FILED STATE HABEAS WITH THE STATE (MAILED 2/29/08) ONE OF THE ISSUES FILED IN PETITIONER'S WRIT OF HABEAS CORPUS IS "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" WHICH PETITIONER COULD NOT RAISE UNTIL PETITIONER'S DIRECT APPEAL WAS FINISHED BEING HEARD).

- 4) "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" APPELLATE COUNSEL FAILED TO RAISE IMPORTANT ISSUES ON PETITIONER'S DIRECT APPEAL. FAILURE TO RAISE THESE ISSUES ON DIRECT APPEAL DEPRIVED THE PETITIONER

OF THE OPPORTUNITY TO HAVE ADJUDICATION OF THE CLAIM AT THAT STAGE OF POST CONVICTION PROCEEDINGS. AT THE VERY LEAST, THE CLAIMS SHOULD HAVE BEEN RAISED TO PRESERVE VIABILITY AS A CLAIM ON FEDERAL HABEAS CORPUS. APPELLATE COUNSEL FAILED TO ENGAGE IN ADEQUATE CONSULTATION WITH THE PETITIONER TO THE EXTENT THAT SUCH FAILURE RESULTED IN A DIRECT APPEAL DEVOID OF THOSE SUBSTANTIAL CONSTITUTIONAL CLAIMS RAISED ON THE PETITIONER'S WRIT OF HABEAS CORPUS NOW PENDING IN THE STATE COURTS. PETITIONER BELIEVES THAT IF APPELLATE COUNSEL HAD PROVIDED EFFECTIVE CONSULTATION, SHE WOULD HAVE BEEN AWARE OF THE IMPORTANCE OF THESE ISSUES TO THE PETITIONER'S CASE AND COULD HAVE RAISED THEM ON

DIRECT APPEAL. AT THE VERY LEAST, ADEQUATE CONSULTATION WOULD HAVE PROVIDED APPELLATE COUNSEL WITH THE OPPORTUNITY TO APPRISE THE PETITIONER OF HER STRATEGY THAT EXCLUDED THESE CLAIMS FROM THE DIRECT APPEAL, AFFORDING PETITIONER THE OPPORTUNITY TO OBJECT TO THE EXCLUSION. PETITIONER RECEIVED A LETTER FROM PETITIONER'S APPELLATE ATTORNEY THE LAST WEEK OF MAY 2007 ADVISING PETITIONER TO PURSUE AN AVENUE IN THE WAY OF A WRIT OF HABEAS CORPUS (SEE ATTACHED LETTER EXHIBIT A) SHE MAILED MY TRANSCRIPTS IN JUNE OF 2007 PETITIONER CLAIMS THAT HE HAS DONE HIS BEST TO RESEARCH, ADDRESS, AND FILE THESE ISSUES IN A TIMELY

MANER. THEREFORE THE PETITIONER,  
MARK MCLEAN SOUNDERS RESPECTFULLY  
REQUESTS THE COURT TO GRANT THE  
REQUESTED STAY IN THE FURTHERANCE  
OF JUSTICE, SO THAT PETITIONER MAY  
EXAUST STATE REMEDIES ON THE  
CURRENT ISSUES NOW PENDING IN  
THE STATE COURTS THEREFORE PRESERVING  
THE OPPORTUNITY TO HAVE THESE  
ISSUES HEARD ON FEDERAL HABEAS  
CORPUS.

RESPECTFULLY SUBMITTED

Mark McLean Sounders  
Mark McLEAN SOUNDERS

IN PEN SE

**Marianne Harguindeguy Cox  
Attorney at Law  
3453 Ingraham Street, PMB 236  
San Diego, California 92109  
(619) 233-0290**

May 24, 2007

Mark McLean Saunders # F02744  
Calipatria State Prison  
Post Office Box 5002  
Calipatria, California 92233

RE: People v. Mark McLean Saunders  
Court of Appeal No. D047541

Dear Mr. Saunders:

As you can see from the document I am sending you, the California Supreme Court denied our petition for review. You may want to take this to the Federal level, so I went to the Federal Court to get you the necessary paper work to pursue that avenue in the way of a Petition for Writ of Habeas Corpus. I have also sent you a copy of a Declaration in Support of Request to Proceed In Forma Pauperis and Certificate. This is an old document and you should obtain a more current copy from your correctional facility. The Federal Court did not provide me a current form as far as the Declaration since that should also be available to you at the prison.

All the information to file in Federal Court you have in State briefings I have provided you. I am not a panel attorney for the Federal Court. If the Court finds merit in your Petition, they will appoint an attorney for you. Please let me know if you need any of those filings re-sent to you..

Please instruct me what to do with your transcripts. I can hold them for you or send them to the prison. You can contact me at the above address.

Sincerely,

  
Marianne Harguindeguy Cox  
State Bar #115755

MHC/ljl

encl.

EXHIBIT A

Short Title:

Court Case No:

## Proof of Service By Mail

I am over the age of 18 and a party/not a party (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON - (I.D. #F05Z744),  
2302 BROWN ROAD  
P.O. BOX 931  
IMPERIAL, CA 92251

I served the attached:

Motion for Stay / ABAYanke

By enclosing true copies in a sealed envelope addressed to each person

whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: 5/7, 2008

### NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

U.S. COURT HOUSE  
SOUTHERN DISTRICT OF CALIFORNIA  
880 FRONT ST. STE. 4290  
SAN DIEGO, CA.  
92101-8900

CALIFORNIA ATTORNEY GENERAL  
110 W. A ST. STE. 1100  
SAN DIEGO, CA.  
92101-3702

I certify under penalty of perjury that the foregoing is true and correct.

DATE: 5/7/08

Mark McLean Saunders  
(TYPE OR PRINT NAME)

Mark McLean Saunders  
(SIGNATURE OF DECLARANT)